



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 24, 2003

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2003-5116

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184785.

The City of Waco (the "city") received a request for all records related to a specific address. You state that some responsive information will be made available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code governs a portion of the submitted information. Section 552.022 provides, in relevant part, as follows:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

¹As you did not submit to this office written comments stating the reasons why section 552.103 would allow the information to be withheld, we find that you have waived this exception. *See* Gov't Code §§ 552.301, .302.

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). In this instance, section 552.022(a)(17) makes the submitted court documents public. Therefore, the city may withhold this information only to the extent it is made confidential under other law. Accordingly, though the city claims that this particular information is excepted from disclosure under section 552.108, this exception is discretionary, and thus, does not constitute other law for the purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally).² Therefore, the city may not withhold the information subject to section 552.022 under section 552.108 of the Government Code. However, as sections 552.101 and 552.130 may except a portion of this information from public disclosure, we will address the applicability of those exceptions to the information subject to section 552.022 along with your claims for the remaining submitted information.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information contained in Exhibit 3 relates to a pending criminal investigation and prosecution. Based upon these representations, we find that the release of Exhibit 3 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that section 552.108(a)(1) is applicable to the information in Exhibit 3.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we agree that the information contained in Exhibit 7, and the information that we have marked in Exhibit 6, pertains to

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)). Discretionary exceptions therefore do not constitute “other law” that makes information confidential.

cases that concluded in a result other than conviction or deferred adjudication. Therefore, section 552.108(a)(2) is applicable to Exhibit 7, and to the marked information in Exhibit 6.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. See Open Records Decision No. 127 (1976) (listing basic information that must be released from offense report in accordance with *Houston Chronicle*). Basic information that must be released includes, but is not limited to, an arrestee's name, address, social security number, offense committed, property involved, vehicle involved, detailed description of the offense, booking information, the charge, and bonding information. *Id.* at 4-5. Thus, with the exception of the basic offense and arrest information, the city may withhold Exhibits 3, 7, and the information we have marked in Exhibit 6 from disclosure based on section 552.108. We note that the city has the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

In regard to the remaining submitted information in Exhibit 8 and the information subject to the purview of section 552.022, section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130. Accordingly, we agree that the city must withhold Texas driver's license, license plate, and motor vehicle information you have marked, as well as the additional information we have marked, pursuant to section 552.130 of the Government Code.

Additionally, these records contain social security numbers. A social security number may be excepted from disclosure in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that the social security numbers in the responsive information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (the "Act") on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the city should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, we conclude that: 1) with the exception of the basic offense and arrest information, you may withhold Exhibits 3, 7, and the information we have marked in Exhibit 6 based on section 552.108 of the Government Code; 2) you must withhold the section

552.130 information; and 3) social security numbers may be confidential under section 552.101 in conjunction with federal law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 184785

Enc. Submitted documents

c: Mr. Michael Parker
3128 Speight Avenue
Waco, Texas 76711
(w/o enclosures)